



## **NATIONAL CREDIT UNION ADMINISTRATION**

### **5 CFR Part 9601**

**RIN 3133-AE10**

## **Supplemental Standards of Ethical Conduct for Employees of the National Credit Union Administration**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The National Credit Union Administration, with the concurrence of the Office of Government Ethics (OGE), is issuing this final rule for employees of the NCUA that supplements the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. The rule prohibits credit union-related employment and requires NCUA employees to obtain approval before engaging in other types of outside employment or activities.

**DATES:** This final rule is effective [insert date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Hattie Ulan, National Credit Union Administration, Alternate Agency Ethics Official, Office of General Counsel, 1775 Duke Street, Alexandria, VA, 22314 or telephone (703-518-6540).

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

## **II. Discussion of Amendments**

## **III. Direct Final Rule**

## **IV. Regulatory Procedures**

### **I. Background**

#### **Why is NCUA issuing this rule?**

On August 7, 1992, OGE published the Standards, which became effective on February 3, 1993. See 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167, with additional grace period extensions for certain existing provisions at 59 FR 4779-4780, 60 FR 6390-6391, and 60 FR 66857-66858. The Standards, as corrected and amended, are codified in 5 CFR part 2635. The Standards set uniform ethical conduct standards applicable to all executive branch personnel (including NCUA employees).

Section 2635.105 of the Standards authorizes an agency, with the concurrence of OGE, to publish agency-specific supplemental regulations that are necessary to properly implement its respective ethics program. To date, the NCUA Board (Board) has not published any agency-specific ethics regulations pursuant to Section 2635.105.<sup>1</sup> Section 2635.802 of the OGE Standards prohibits employees from engaging in outside employment or activities that conflict with official duties. Section 2635.803 of the OGE Standards authorizes the Board to issue a supplemental

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<sup>1</sup> Certain senior NCUA examiners are subject to post-employment restrictions found in Part 796 of the NCUA Regulations, 12 CFR part 796. Part 796 was issued pursuant to a provision of the Federal Credit Union (FCU) Act, rather than pursuant to the ethics regulations. See Section 206(w) of the FCU Act, 12 U.S.C. 1786(w).

regulation requiring employees to obtain its prior approval before engaging in outside employment or activities where the Board has determined it necessary or desirable for the purpose of administering its ethics program. Such a supplemental regulation may apply to all employees or a category of employees. *Id.* Most, if not all, of the other financial regulatory agencies have issued supplemental regulations. In most of the agencies' regulations reviewed, employees are prohibited from working for regulated institutions and affiliates, and employees must get approval for certain outside employment and activities due to the nature of the agencies' work and the potential for conflict of interest.

#### **Why is this rule necessary?**

In the recent past there have been cases where NCUA employees have participated in outside employment/activities without such consultation and the employment/activity has resulted in either an appearance of or an actual conflict of interest. For example, an NCUA examiner could not serve as a volunteer director of a credit union as this would present an appearance of a conflict of interest as well as other potential violations of the Standards. Neither could an NCUA examiner serve as a paid part-time manager of a credit union for the same reasons. The Board has now determined that a supplemental regulation will be necessary and useful in avoiding potential conflicts of interest. The rule contains a general provision referring to the Standards and additional ethics provisions that prohibit employment in credit unions and related entities and requires approval for other outside employment and activities. The Board, with OGE's concurrence, has determined

that the following supplemental rule is necessary for successful implementation of its ethics program in light of NCUA's unique programs and operations.

### **Where is the new rule found?**

All supplemental agency ethics regulations are found in part 5 of the Code of Federal Regulations, following the OGE Regulations.<sup>2</sup> NCUA has been assigned 5 CFR part 9601 for its supplemental ethics regulation.

## **II. Discussion of Amendments**

### *Section 9601.101 General*

#### **What does the general provision contain?**

Paragraph (a) explains that the regulation applies to NCUA employees, other than special government employees,<sup>3</sup> and supplements the OGE Standards. Paragraph (b) notes that employees must comply with ethics guidance and procedures issued by NCUA. This paragraph also includes cross-references to other OGE ethics related regulations including the regulations concerning Executive Branch financial disclosure, financial interests, and post-employment, and to the NCUA specific regulation regarding post-employment restrictions applicable to senior examiners spending a specific amount of time in a particular credit union. See footnote 1. In addition, this paragraph notes that employees should contact an NCUA ethics official if an ethics question arises.

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<sup>2</sup> All other NCUA-specific regulations are found in 12 CFR chapter VII.

<sup>3</sup> Special government employees are defined in the Standards at 5 CFR 2635.102(l) as employees to perform temporary duties for a period not to exceed 130 days during any consecutive 365-day period.

## *Section 9601.102 Definitions*

### **How is employment defined?**

Paragraph (a)(1) broadly defines “employment” to include any form of non-Federal employment or business relationship involving the provision of personal services other than in the discharge of official duties, regardless of whether the services are compensated. In addition to more typical second jobs, employment includes outside teaching, speaking or writing when the writing is done under an arrangement with another person or for the publication of a written product. Employees who operate their own businesses are subject to the approval requirement. Paragraph (a)(2) excludes from the definition of employment non-compensated participation in the activities of certain nonprofit organizations. Employees are not required to seek approval if working for the type of organization described in paragraph (a)(2) unless:

- 1) the employee will receive compensation other than reimbursement of expenses;
- or 2) the organization’s activities substantially relate to the employee’s official duties.

If either of the above two criteria are met, employees must request and obtain approval before engaging in outside employment for the organization.

### **How are credit union-related entities defined?**

For purposes of this rule, a credit union includes both insured and noninsured credit unions as defined in section 102(7) of the Federal Credit Union Act, 12 USC 1752(7), and a credit union service organization (CUSO) as defined in section 741.222(a) of the NCUA Regulations, 12 CFR 741.222. A credit union trade group

is a trade organization whose membership is comprised of credit unions, CUSOs, state credit union regulators, state credit union organizations, and employees and officials of such organizations. Other credit union-related entities may be specified in Instructions issued by the Designated Agency Ethics Official (DAEO) pursuant to section 104.

### *Section 9601.103 Prohibited Employment*

**Why is an outright prohibition necessary?** Most of the financial regulatory agencies' supplemental ethics regulations contain an outright prohibition against their employees working for their own regulated entities as well as affiliated entities, in any capacity. See, e.g., FDIC Supplemental Standards at 5 CFR 3201.107(a).

The Board believes that an outright prohibition against NCUA employees, other than special government employees, working for credit unions, CUSOs, credit union trade groups, and related entities is appropriate and necessary because such employment or other service would either involve a direct conflict of interest or the appearance of a conflict of interest.

### *Section 9601.104 Prior Approval for Outside Employment*

#### **When is approval required?**

Paragraph (a)(1) requires prior approval before an employee, other than a special government employee, engages in non-prohibited outside employment, with or without compensation. Employees must obtain the approval of their immediate supervisor with the concurrence of the Designated Agency Ethics Official (DAEO).

Paragraph (a)(2) includes an approval requirement for outside employment that predates the effective date of this regulation. It also requires that new NCUA employees, other than special government employees, either terminate such employment or activities if prohibited by section 103 or get approval of continuing outside employment or activities pursuant to the rule.

**How is the request for approval submitted and what information must it contain?**

Paragraph (b) requires that the employee, other than a special government employee, submit an e-mail or other form of written correspondence to his or her supervisor to request approval. The employee must submit the name of his or her outside employer, the title of the outside position, the nature of the work to be performed, and the estimated duration of the outside employment. The employee may provide additional information addressing any potential conflicts of interest. This paragraph also requires that if there is a significant change in either outside employment or in the employee's official position at NCUA, the employee must submit a revised request for approval.

**What standard will be applied to requests for approval?**

Paragraph (c) states that approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. This involves a conflict of interest analysis (including appearance issues) as well as a review of the additional

prohibitions in the Standards addressing outside employment. See 5 CFR 2635.801 et seq. For example, the Standards address service as an expert witness, limit the outside income of noncareer employees, and impose limitations on teaching, speaking and writing. See 5 CFR 2635.804, 805 and 807. There are also provisions in the United States criminal code addressing special approval for certain representational activities. See 18 U.S.C. 203(d) and 205(e). These provisions are addressed in a note to the rule. The requirement for the DAEO's concurrence with the supervisor's approval will assure that all provisions of the ethics laws are addressed in the approval process.

### *Section 9601.105 DAEO Responsibilities*

#### **What are the DAEO's responsibilities under this new rule?**

Pursuant to delegated authority, the DAEO will issue an Instruction setting forth specific procedures to be followed concerning this new regulation prior to its effective date. As noted above, the effective date is the date of publication in the Federal Register. Future Instructions may exempt categories of employment from prior approval as well as set forth examples of outside employment that are permissible or impermissible under the rule, including examples of organizations or entities similar to credit unions, credit union trade groups, and credit union service organizations (other credit union-related entities).

### **III. Direct Final Rule**



Pursuant to the Administrative Procedure Act, 5 U.S.C. 553, notice and public comment are not required because this rule concerns matters of agency organization, practice and procedure. In addition, the Board finds good cause exists for waiving the general notice of proposed rulemaking and opportunity for public comment because the rule primarily affects agency employees. The Board is issuing this rule as a final rule that is effective upon publication. See 5 U.S.C. 553(a)(2), (b)(3)(A) and (B), and (d)(3) .

#### **IV. Regulatory Procedures**

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars. This interim final rule will not have a significant economic impact on a substantial number of small credit unions as it primarily affects NCUA employees.

##### *Paperwork Reduction Act*

NCUA has determined that the final rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 et seq.; 5 CFR part 1320.

##### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence with fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 5302(5), voluntarily complies with the executive order. The final rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

*The Treasury and General Government Appropriations Act, 1999 – Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

*Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-212 (SBREFA)), provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. NCUA has requested a SBREFA determination from the Office of Management and Budget, which is pending. As

required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accountability Office so that the rule may be reviewed.

**List of Subjects in 5 CFR Part 9601**

Conflict of interests, Government employees.

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**Mary Rupp,**

*Secretary of the Board.*

*Dated: February 21, 2013*

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Walter M. Shaub, Jr.

*Director, Office of Government Ethics*

*Approved: April 1, 2013*

Accordingly, for the reasons set forth in the preamble, the National Credit Union Administration Board, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter LXXXVI, consisting of part 9601, to read as follows:

**TITLE 5 – Administrative Personnel**

**CHAPTER LXXXVI - NATIONAL CREDIT UNION ADMINISTRATION**

**PART 9601 - SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR  
EMPLOYEES OF THE NATIONAL CREDIT UNION ADMINISTRATION**

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9601.101 General.

9601.102 Definitions.

9601.103 Prohibited outside employment.

9601.104 Prior approval for outside employment.

9601.105 DAEO's responsibilities.

**Authority:** 12 U.S.C. 1752a(d), 1766; 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 5 CFR 2635.403, 5 CFR 2635.502 and 5 CFR 2635.803

**§ 9601.101 General**

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the National Credit Union Administration (NCUA), other than special government employees as defined in 5 CFR 2635.102(l) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635 (Office of Government Ethics (OGE) Standards).

(b) *Other regulations, guidance and procedures.* In addition to 5 CFR part 2635 and this part, NCUA employees are required to comply with implementing guidance and procedures issued by the NCUA in accordance with 5 CFR 2635.105(c). NCUA employees are also subject to other government-wide ethics regulations including, but not limited to: regulations concerning financial disclosure contained in 5 CFR part 2634, regulations concerning executive branch financial interests and conflicts contained in 5 CFR part 2640, and regulations concerning post-employment restrictions contained in 5 CFR part 2641. Certain senior NCUA examiners are also subject to post-employment restrictions contained in NCUA's Regulation found at 12 CFR part 796. Employees should contact an NCUA ethics official if they have questions about any provision of this regulation or other ethics-related matters.

#### **§ 9601.102 Definitions.**

The following definitions apply to this part:

(a) *Employment.*

- (1) For purposes of this section, "employment" means any form of non-Federal employment, business relationship, or activity involving the provision of personal services by the employee, whether or not for compensation. It includes, but is not limited to, services as an officer, director, employee, agent, advisor, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes a writing when

done under an arrangement with another person for production or publication of the written product.

- (2) The definition of employment does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless:
- (i) The employee will receive compensation other than reimbursement of expenses; or
  - (ii) The organization's activities are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E).

Note to paragraph (a): There is a special approval requirement set out in both 18 U.S.C. 203(d) and 205(e), respectively, for certain representational activities otherwise covered by the conflict of interest restrictions on compensation and activities of employees in claims against and other matters affecting the Government. Thus, an employee who wishes to act as agent or attorney for, or otherwise represent his parents, spouse, child, or any person for whom, or any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary in such matters must obtain the approval required by law of the Government official responsible for the employee's appointment in addition to the regulatory approval of this section.

*(b) Credit union-related entities.*

- (1) Credit union includes insured and non-insured credit unions as defined in Section 102(7) of the Federal Credit Union Act (the Act), 12 USC 1752(7).
- (2) Credit union service organization as defined in § 741.222(a) of the NCUA Regulations, 12 CFR 741.222(a).
- (3) Credit union trade groups include credit union trade organizations whose membership is comprised of credit union, CUSO, state credit union regulators, state credit union organizations, and officials and employees of such organizations.
- (4) Other credit union-related entities may be defined pursuant to Agency Instruction.

**§ 9601.103 Prohibited outside employment.**

No employee may engage in outside employment, with or without compensation, with any credit union, credit union trade group, credit union service organization, or other credit union-related entity, in any capacity.

**§ 9601.104 Prior approval for outside employment.**

*(a) General requirement.*

- (1) Before engaging in any outside employment, with or without compensation, other than prohibited employment in section 103 of the Act, an NCUA employee, other than a special government employee, must obtain written approval from the employee's supervisor and the concurrence of the Designated Agency Ethics Official (DAEO), except to the extent that the DAEO has issued an instruction pursuant to section 105 of the Act exempting an activity or class of activities from this requirement.

(2) Any employee, other than a special government employee, who, before the effective date of this part or commencement of employment with NCUA, began engaging in outside employment must, within 30 calendar days of the effective date of this part or 30 days of commencement of employment with NCUA, either terminate such employment if it is in violation of section 103 of the Act or request written approval from his or her supervisor and the concurrence of the DAEO in accordance with this section. The employee may continue engaging in the outside employment while the request for approval is under review.

*(b) Procedure for requesting approval.*

- (1) Employees shall request the approval required by paragraph (a) of this section by e-mail or other form of written correspondence in advance of engaging in outside employment as defined in section 102 of the Act. The employee requesting approval shall submit the request to his/her supervisor.
- (2) The request for approval to engage in outside employment shall set forth, at a minimum:
  - (i) The name of the employer or organization;
  - (ii) The nature of the activity or other work to be performed;
  - (iii) The title of the position; and
  - (iv) The estimated duration of the outside employment.



(3) Upon a significant change in the nature or scope of the outside employment or in the employee's official position with the NCUA, the employee must, within 7 calendar days of the change, submit a revised request for approval.

(c) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

**§ 9601.105 DAEO's responsibilities.**

The NCUA DAEO may issue Instructions governing the submission of requests for approval of outside employment. The Instructions may exempt categories of employment from prior approval requirement of this section based on a determination that employment within those categories of employment would generally be approved and is not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. The DAEO may include in these Instructions examples of outside employment that are permissible or impermissible consistent with this part and 5 CFR part 2635, including examples of other credit union-related entities.

**[FR Doc. 2013-08086 Filed 04/16/2013 at 8:45 am; Publication Date: 04/17/2013]**